



California Fair Political Practices Commission

March 15, 1988

Eric P. Gold
Cooper, Margolin and Biatch
Attorneys at Law
1970 Broadway, Suite 940
Oakland, CA 94612

Re: Your Request for Advice
Our File No. A-88-056

Dear Mr. Gold:

This is in response to your letter requesting advice regarding your responsibilities, as a member of the California Medical Assistance Commission (CMAC), under the conflict-of-interest provisions of the Political Reform Act ("the Act").^{1/}

QUESTION

You provide legal services to a health maintenance organization (HMO), which is a small department of a nonprofit hospital (HMO hospital). The HMO hospital is a subsidiary of a nationwide nonprofit health system corporation that owns a number of other subsidiary nonprofit hospitals in California. Are you required to disqualify yourself from CMAC decisions regarding the subsidiary hospitals as a consequence of your connection with the HMO?

CONCLUSION

You are not required to disqualify yourself from participating in decisions regarding the subsidiary hospitals. Since the HMO and the HMO hospital are nonprofit entities,

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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decisions made by CMAC regarding the subsidiary hospitals do not create a conflict of interest for you.^{2/}

FACTS

You are an attorney in solo private practice, and a member of the California Medical Assistance Commission (CMAC). CMAC's principal responsibility is the negotiation of amendments to existing hospital Medi-Cal contracts.

One of your law clients is an HMO which is a department of a nonprofit hospital (HMO hospital) which has a Medi-Cal contract with the state. The HMO hospital was recently acquired by a national nonprofit health system corporation. This corporation has approximately six other hospitals operating as subsidiaries in California.

Most, but not all of these subsidiary hospitals previously negotiated a Medi-Cal contract with CMAC. As time goes by, it is likely that each of these hospitals will seek a rate increase or other contractual amendment from CMAC.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family, or on:

(c) Any source of income ... aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103 (c).

^{2/} As we discussed over the phone, your factual situation raises questions concerning application of Section 1090, et seq. This agency does not have jurisdiction with respect to Section 1090 and, therefore, does not provide advice with respect to its provisions.

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You are a public official as a consequence of your position as a CMAC member. (Section 82048.) Accordingly, you must refrain from participating in any governmental decision where it is reasonably foreseeable that the decision would have a material financial effect on a source of income, which is distinguishable from its effect on the public generally. Because you are the sole owner of your law practice, your clients are sources of income to you. (Section 82030.) Since the HMO is simply a department of the HMO hospital, the HMO hospital is a source of income to you.

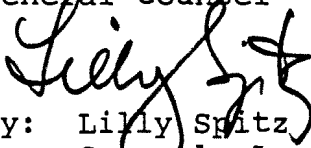
You have stated that you will disqualify yourself from any decision of CMAC which involves the HMO hospital. Your concern is whether you must abstain from participation in CMAC decisions regarding the subsidiary hospitals because of their connection to the HMO hospital.

Regulation 18706 (copy enclosed) provides that an official has a financial interest in a decision having a material financial effect on a parent or subsidiary of a business entity in which the official has an economic interest. The Act defines "business entity" as an organization or enterprise operated for profit. (Section 82005.) Since the HMO hospital and the other facilities related to the parent organization are nonprofit enterprises, they are not "business entities" within the meaning of the Act. Consequently, you do not have a financial interest in the subsidiary hospitals, and you are not required to disqualify yourself from participation in decisions affecting their Medi-Cal rates. (See Advice Letters to Pitts, No. A-85-028, and Gold, No. A-85-206, copies enclosed.)

I hope this clarifies your responsibility under the Act. If I can be of further assistance, please don't hesitate to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh
Enclosures

CALIFORNIA MEDICAL ASSISTANCE COMMISSION

1121 L STREET, SUITE 300
SACRAMENTO, CALIFORNIA 95814
(916) 324-2726



FEB 1 1988

January 27, 1988

Ms. Lily Spitz
California Fair Political
Practices Commission
428 J. Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Re: Request for Advice

Dear Ms. Spitz:

I am a member of the California Medical Assistance Commission ("CMAC"). I request your opinion as to whether my provision of legal services to an HMO (as described below) requires that I disqualify myself from votes on contract amendments in the case of all hospitals which are subsidiary corporations of the nationwide company to which the HMO is also a subsidiary corporation.

CMAC Responsibilities. The responsibilities of CMAC are described in FPPC Advice Letter, October 11, 1985, File No. A-85-206. Since the writing of that letter, CMAC is no longer implementing the prepaid health pilot projects (because of legislative action), and is not negotiating new county-wide contracts because of Congressional action. Accordingly, the principal CMAC function now is the negotiation of amendments to existing hospital Medi-Cal contracts.

Legal Services. CMAC is a part-time commission, and I am also an attorney in private practice. One of my clients is a health maintenance organization (HMO) operating in the San Francisco Bay area. The HMO is a semi-independent department of a nonprofit hospital ("HMO Hospital"). My legal work is solely for the HMO plan and is neither directly nor indirectly related to any CMAC activity or responsibility.

Description of System. The Hospital was recently acquired by a national non-profit health system corporation. This national corporation has, as subsidiaries, approximately 45 - 50 hospitals, operating in 17 states and the District of Columbia. In addition, it owns skilled nursing facilities as well as psychiatric care and other health care entities. Included in the system are at least 14,000 licensed beds. The corporation has national out-of-state offices and various regional offices.

The HMO Hospital is one of approximately six or seven hospitals in California which are subsidiaries in the national

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corporation healthcare system. Each of the other California hospitals are subsidiaries of a parent company which in turn is a subsidiary of either the national company or its regional office. A rough diagram of the approximate organizational structure is attached.

Most, but not all, of these subsidiary hospitals previously negotiated a Medi-Cal contract. In each case, the contract is with the hospital corporation itself - not the hospital's parent corporation, the regional corporation, or the national corporation. As time goes by, it is likely that each of these hospitals will seek a rate increase or other contractual amendment from CMAC. The significance of the Medi-Cal contract and Medi-Cal revenues varies for each of these hospitals. In general, Medi-Cal typically constitutes about 10% of a contract hospital's revenue. Since the average CMAC-approved rate increase has been about 3.8%, a CMAC action in respect to a the reimbursement rates for one of these subsidiary hospitals would presumably affect that hospital's revenues by less than 1%. Thus, CMAC contracts, individually or in aggregate, affect an extremely small portion of the revenues coming into either the corporation's national or regional healthcare system. In addition, to my knowledge, any such rate increase is used by the hospital to offset the costs of providing care (most hospitals say there is no "profit" in the Medi-Cal reimbursement) - and does not go to either to the national or regional corporation or any other subsidiary in its healthcare system.

The HMO Hospital has its own board of directors and management which does not overlap with the management and board of the national/regional corporations or any of its other subsidiary hospitals (or hospital parents). Each of the other subsidiary hospitals (and parents), likewise, have their own boards of directors and management and these do no overlap with the national or regional corporations or the other hospitals. This information is what was available to management of the HMO which has only indirect knowledge of the structures described above. It is possible, however, that there is some overlap of boards and management between a hospital and its immediate hospital parent. It is also possible that bylaws of these various corporations would automatically provide for a seat on the board to the president of the parent corporation(s).

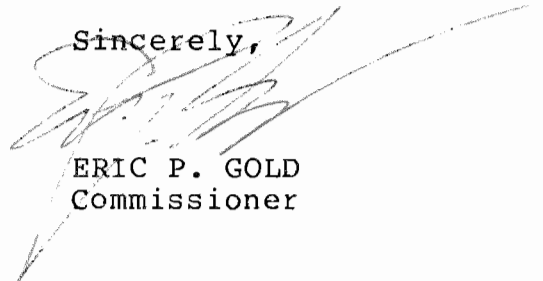
I intend to disqualify myself from any vote on a contract amendment for the HMO Hospital. My question is whether I must also disqualify myself from votes in respect to the other hospitals whose parent corporations are subsidiaries of the regional parent to which the HMO Hospital is also a subsidiary.

If any additional information is required for your advice, please do not hesitate to contact me.

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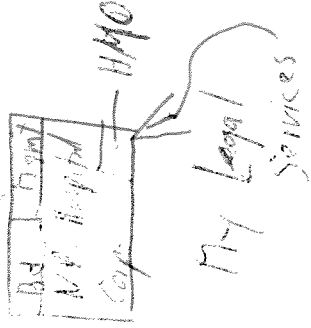
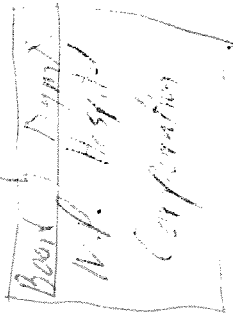
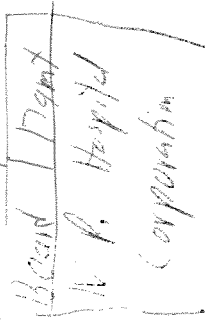
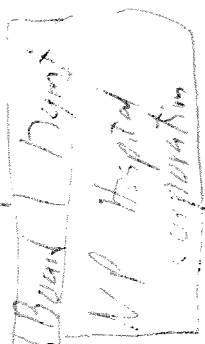
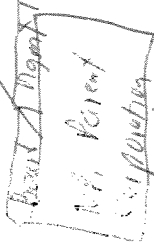
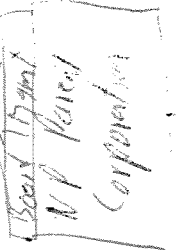
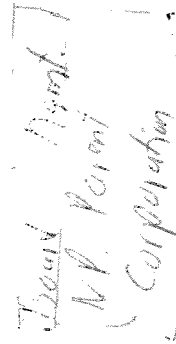
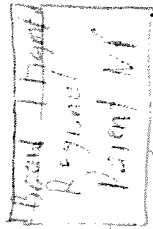
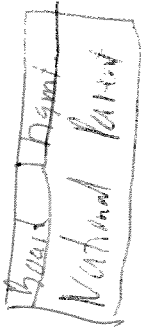
Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Eric P. Gold", is written over the typed name. The signature is stylized with a large, sweeping initial "E" and a long, horizontal stroke extending to the right.

ERIC P. GOLD
Commissioner

CC: CMAC



The UHO management is semi-independent of the hospital management.

California & Western Region
Hospitals

NP = non profit
Direct = Management
Board = Board of Directors



California Fair Political Practices Commission

February 1, 1988

Eric P. Gold
Cooper, Margolin & Hatch
1970 Broadway, Suite 940
Oakland, CA 94612

Re: 88-056

Dear Mr. Gold:

Your letter requesting advice under the Political Reform Act was received on February 1, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh